

Message Text

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INFO AMEMBASSY MOSCOW

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TAGS: PBOR, EMIN, EFIS, NO, UR

SUBJECT: LOS-NORWEGIAN/USSR CONTINENTAL SHELF BOUNDARY

REFS: A) OSLO 4272 (1973); B) STATE 032942 (1973)

1. ANSWERS BELOW ARE KEYED TO QUESTIONS POSED BY REF. A:

A.1. UNITED STATES HAS NOT TAKEN PUBLIC POSITION ON LOCATION OF NORWEGIAN-USSR BOUNDARY IN BARENTS SEA, AND ISSUE MUST RECEIVE FURTHER SERIOUS CONSIDERATION BEFORE PUBLIC POSITION IS TAKEN. AS INDICATED REF. B, QUESTION OF WHETHER UNITED STATES NATIONALS HAVE RIGHTS UNDER 1920 SPITSBERGEN TREATY TO EXPLORE AND EXPLOIT RESOURCES ON THE CONTINENTAL SHELF BEYOND TERRITORIAL SEA OFF SPITSBERGEN (NOW PART OF SVALBARD) HAS BEEN UNDER CONSIDERATION. CONFIDENTIAL

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DECISION ON THIS ISSUE WILL REQUIRE FURTHER STUDY OF LEGAL ASPECTS OF THE TREATY, CONSIDERATION OF IMPLICATIONS FOR THE LAW OF THE SEA CONFERENCE, AND CONSULTATION AND COORDINATION WITH OTHER CONTRACTING PARTIES. IF CONCLUSION

IS THAT CONTRACTING PARTIES DO NOT HAVE MINING RIGHTS BEYOND TERRITORIAL SEA, THEN USSR-NORWAY BOUNDARY NEGOTIATIONS DO NOT INVOLVE UNITED STATES INTERESTS (ASSUMING BOUNDARY WOULD NOT DIRECTLY AFFECT SVALBARD OR ITS FOUR-MILE TERRITORIAL WATERS). IF CONCLUSION IS THAT UNITED STATES NATIONALS DO HAVE TREATY RIGHTS ON CONTINENTAL

SHELF BEYOND TERRITORIAL WATERS, THEN BOUNDARY NEGOTIATIONS DO AFFECT UNITED STATES INTERESTS. IT SHOULD BE NOTED THAT

IN THIS SITUATION, NORWAY HAS THE SAME INTEREST IN THE NEGOTIATION AS THE UNITED STATES WOULD HAVE--I.E., MAXIMIZE ITS CONTINENTAL SHELF--AND THUS OUR POSITION SHOULD BE GENERALLY PROTECTED. HOWEVER, THERE MIGHT BE LEGAL QUESTION CONCERNING WHETHER NORWAY COULD NEGOTIATE BOUNDARY WITHOUT CONCURRENCE OF THE OTHER STATES AFFECTED. IN ANY EVENT, EMBASSY SHOULD BE CAREFUL TO AVOID ANY IMPLICATION THAT UNITED STATES GOVERNMENT BELIEVES ITS TREATY RIGHTS ARE LIMITED TO LAND AND TERRITORIAL SEA, AND DO NOT APPLY TO CONTINENTAL SHELF AS WELL.

B.1. METHODS BY WHICH BOUNDARIES CAN BE DELINEATED BY AGREEMENT ARE LIMITED ONLY BY THE BOUNDS OF THE IMAGINATION FOR EXAMPLE, THE FOLLOWING ARE WAYS BOUNDARIES BETWEEN ADJACENT STATES HAVE BEEN DETERMINED: 1. EQUIDISTANCE; 2. LINE DRAWN PERPENDICULAR TO THE GENERAL DIRECTION OF THE COAST; 3. LINE PERPENDICULAR TO THE COAST AT THE POINT WHERE THE LAND BOUNDARY INTERCEPTS IT; 4. EXTENSION OF LAND BOUNDARY ONTO THE HIGH SEAS; 5. THE LINE OF THE GEOGRAPHICAL PARALLEL OR MERIDIAN AT THE POINT WHERE THE LAND BOUNDARY MEETS THE SEA. ANOTHER METHOD USES THE GEOGRAPHICAL CONFIGURATION OF THE SHELF, WHERE THERE ARE DEEP TRENCHES DIVIDING SHELF AREAS. THE UNITED STATES HAS TAKEN POSITION THAT THIS IS THE MOST APPROPRIATE METHOD OF DIVISION IN UNITED STATES-CANADIAN NEGOTIATIONS CONCERNING OUR ATLANTIC BOUNDARY.

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B.2. THE EQUIDISTANCE PRINCIPLE (MEDIAN OR LATERAL LINE) IS A LINE ANY POINT ON WHICH IS EQUIDISTANT BETWEEN RESPECTIVE BASELINES WHICH HAVE BEEN CHOSEN AS MEASURING POINTS ON THE COASTS OF THE OPPOSITE OR ADJACENT COASTAL STATES. THIS PRINCIPLE HAS HAD SOMEWHAT MORE BACKING THAN ANY OF THE OTHER RULES. FIRST ENDORSED IN 1937, IT WAS LATER USED FOR BOUNDARIES BETWEEN YUGOSLAVIA AND ITALY AND A SECTION OF THE BOUNDARY BETWEEN THE UNITED STATES AND CANADA ON THE MAINE-NEW BRUNSWICK BORDER. NORWAY HAS CALLED IT A RULE SUITABLE FOR GENERAL APPLICABILITY. HOWEVER, CZECHOSLOVAKIA AND THE USSR HAVE CRITICIZED THE RULE AS CONTRARY TO STATES' PRACTICES. THE EQUIDISTANCE PRINCIPLE WAS INCORPORATED IN THE 1958

CONVENTION ON THE CONTINENTAL SHELF (ARTICLE 6) AS THE METHOD TO BE USED FOR BOTH OPPOSITE AND ADJACENT BOUNDARIES IN THE ABSENCE OF AGREEMENT BETWEEN THE COASTAL STATES AND UNLESS ANOTHER BOUNDARY LINE IS JUSTIFIED BY SPECIAL CIRCUMSTANCES. HOWEVER, IN 1969, THE ICJ REJECTED EQUIDISTANCE AS AN OBLIGATORY RULE OF LAW FOR DELINEATION OF BOUNDARIES BETWEEN ADJACENT STATES IN THE ABSENCE OF OTHER AGREEMENT (NORTH SEA CONTINENTAL SHELF CASES). AT THE SAME TIME THE COURT, IN DICTUM, IMPLICITLY APPROVED

USE OF THE EQUIDISTANCE PRINCIPLE FOR OPPOSITE STATES.

B.3. IT SHOULD BE NOTED THAT THE 1957 NORWAY-USSR BOUNDARY IN THE VARANGERFJORD, WHICH EXTENDS ONLY OUT TO ABOUT TWELVE MILES AT THE PRESENT TIME, WAS DETERMINED ON A MODIFIED EQUIDISTANCE PRINCIPLE. TWO EQUIDISTANT POINTS WERE SET AND A STRAIGHT LINE DRAWN BETWEEN THEM. HOWEVER, THIS LINE CONNECTING THE TWO TERMINI WAS NOT DRAWN TO EQUALLY DIVIDE THE WATER AREA.

B.4. THE UNITED STATES SUPPORTS NEGOTIATED BOUNDARY AGREEMENTS IN WHICH THE BOUNDARY IS DELINEATED ON AN EQUITABLE BASIS. WE RECOGNIZE THAT IN MANY CASES THE EQUIDISTANT LINE WILL PROVIDE THE MOST OBJECTIVE, SATISFACTORY DIVISION. HOWEVER, IN OTHER CASES, DUE TO THE CONFIGURATION OF THE COAST, AN EQUIDISTANT LINE MIGHT PROVE INEQUITABLE, AND ANOTHER FORMULA SUCH AS THE GEOGRAPHICAL NATURE OF THE SHELF, EXTENSION OF LAND
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BOUNDARIES, OR SOME OTHER METHOD SHOULD BE USED.

B.5. THE ARCTIC SECTOR PRINCIPLE, BRIEFLY STATED, IS THAT ALL LANDS DISCOVERED OR UNDISCOVERED WITHIN A SPHERICAL TRIANGLE FORMED BY THE NORTH POLE AND THE EASTERLY AND WESTERLY LIMITS OF A COUNTRY'S ARCTIC OCEAN COAST BELONG TO THE COASTAL STATE, OR THAT THIS STATE SHOULD HAVE AT LEAST A PREFERENTIAL RIGHT TO ACQUISITION. THIS PRINCIPLE WAS FIRST GIVEN IMPETUS IN CANADA IN 1907. SINCE 1907 BOTH CANADA AND RUSSIA HAVE MADE CLAIMS BASED ON THIS PRINCIPLE. THE 1926 SOVIET CLAIM ASSERTED SOVEREIGNTY OVER ALL LANDS AND ISLANDS WITHIN THE SOVIET SECTOR. 1926 CLAIM INCLUDES KARA SEA BUT DOES NOT EXTEND INTO BARENTS SEA. CLOSURE INCLUDES EVERYTHING EAST OF LINE FROM MYS ZHELANIYA TO GRAHAM BELL. NORTHERN BOUNDARY IS LINE FROM GRAHAM BELL TO OSTROV KOMSOMOLETS ISLANDS. ALTHOUGH SOME SOVIET JURISTS HAVE ARGUED THAT THE SECTOR CLAIM ALSO INCLUDES JURISDICTION OVER WATER AREAS, IT IS UNCLEAR WHETHER USSR HAS EVER OFFICIALLY INTERPRETED ITS CLAIM TO APPLY TO AREAS OTHER THAN LAND. IN THIS CASE USSR IS ATTEMPTING TO APPLY THE PRINCIPLE TO THE CONTINENTAL SHELF IN CERTAIN AREAS ON A NEGOTIATED

BASIS.

B.6. THE UNITED STATES, WHILE A POTENTIAL CLAIMANT IN THE ARCTIC UNDER THE SECTOR PRINCIPLE, HAS CONSISTENTLY DENIED THAT SECTOR CLAIMS HAVE LEGAL FORCE. UNITED STATES OPPOSITION TO THE PRINCIPLE IS BASED ON THE BELIEF THAT IT ARTIFICIALLY DIVIDES UP THE WORLD AREA; THAT IT VIOLATES THE LONG-RECOGNIZED PRINCIPLE OF ESTABLISHING SOVEREIGNTY BY THE RIGHT OF DISCOVERY AND EFFECTIVE

OCCUPATION; AND THAT THE PRINCIPLE HAS THE POTENTIAL OF BEING USED TO CLAIM SOVEREIGNTY OVER THE HIGH SEAS, THEREBY INFRINGING ON THE RIGHTS OF ALL NATIONS TO THE FREEDOMS OF THE HIGH SEAS. NORWAY HAS ALSO NOT MADE ARCTIC SECTOR CLAIMS AND HAS NOT RECOGNIZED ANY FORM OF SECTOR THEORY IN THE ARCTIC.

C. OFFICE OF THE GEOGRAPHER IS PREPARING MAPS SHOWING THE USSR SECTOR CLAIM AND BOUNDARIES DRAWN BY CONFIDENTIAL

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VARIOUS MEANS. MAPS WILL BE POUCHED AS SOON AS THEY ARE COMPLETED. RUSH

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